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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of	)	MM Docket No. 86-440
Achernar Broadcasting Company	)	File No. BPCT-860410 KP
Lindsay Television, Inc.	)	File No. BRCT-860410 KQ
For Construction Permit	)	
For a New UHF Station	)	
In Charlottesville, Virginia	)	

To: The Commission

OPPOSITION TO FILING OF GIVENS & BELL  
DATED MAY 25, 2000

1. Achernar Broadcasting Company and Lindsay Television, Inc., owners of Charlottesville Broadcasting Corporation,<sup>1/</sup> were granted a construction permit for a new television station on Channel 19, Charlottesville, Virginia, by Commission action released April 28, 2000 (*Memorandum Opinion and Order*, FCC 00-149). By a single pleading, Givens & Bell, a Division of Blue Ridge Video Systems (Petitioner) seeks: action in the nature of reconsideration of the Commission's grant of the Achernar/Lindsay settlement agreement, related amendments and construction permit; recall and reopening of the MM Docket 86-440 proceeding and dismissal of the Achernar and Lindsay construction permit

1/ Charlottesville Broadcasting Corporation is a District of Columbia corporation. The fact that there is apparently a Virginia corporation of the same name is immaterial. Should the permittee of Channel 64/19 seek to reregister in the Commonwealth of Virginia, it would of course be prepared to change its name to avoid confusion.

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applications; and immediate grant of Petitioner's March 13, 2000 "multiple action" petition filed in response to *Public Notice*, DA 99-2605, including acceptance for filing of Petitioner's application for Channel 64, Charlottesville (BPCT 961023KF), accordance of party status in MM Docket No. 86-440 to Petitioner, entertainment of a rulemaking petition pursuant to DA 99-2605 to assign Channel 19 to Charlottesville, and leave to Petitioner to file an amendment to specify Channel 19.<sup>2/</sup>

2. The Givens & Bell petition is fatally flawed on multiple procedural and jurisdictional grounds: (1) the Petitioner is not a party to the MM Docket No. 86-440 and never sought to be one during the 15 year life of the proceeding; (2) any objections Petitioner now seeks to raise to the Achernar/Lindsay applications, amendments and agreements are grossly untimely and lack the factual support and authentication required by the Commission's rules (e.g., 47 C.F.R. § 73.3584(c)); and (3) Petitioner's filings pursuant to DA 99-2605, released November 22, 1999, are irrelevant to this case.

3. To seek reconsideration of a Commission action a petitioner must show that he is a "party" to the proceeding

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2/ The Petition is facially deficient as a technical matter: the pages are unnumbered in contravention of 47 C.F.R. § ; the summary required by 47 C.F.R. § is not provided; and the pleading exceeds the 25 page limit of 47 C.F.R. § 1.106(f).

or, if not, "shall state with particularity the manner in which [his] interests are adversely affected . . . and shall show good reason why it was not possible for him to participate at an earlier stage of the proceeding." 47 C.F.R. § 1.106(b). In this instance Petitioner has made no effort to show why it did not seek to participate in this proceeding at an earlier stage. Petitioner's application reflects the fact that the Petitioner knew of the pending status of the Achernar and Lindsay applications prior to tendering its own application in October 1996. Special Exhibit 1 to the Givens & Bell application notes the fact that the Achernar and Lindsay applications had been remanded to the Commission by the Court. Notwithstanding this admitted knowledge of the then 10 year old ongoing MM 86-440 proceeding, Petitioner undertook to lodge an unauthorized application of no force or effect;<sup>3/</sup> failed to serve copies on or otherwise give notice to any of the legitimate parties in interest; remained silent while those parties spent the next four years litigating, negotiating and filing papers with the Commission and the Court of Appeals in order to secure a conclusion to what has become the oldest remaining broadcast proceeding on the Commission's docket; and then surfaced

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3/ The Givens & Bell application (BPCT-961023KF) was tendered but not accepted for filing and acquired no legal status in the MM Docket No. 86-440 proceeding.

with an impermissibly prolix pleading fraught with procedural defects and of no substantive merit whatever.

4. Petitioner's entire position rests on an apparent misunderstanding of the legal status of the Achernar/Lindsay applications between 1991 and 1999. While the Commission's 1991 Decision proposed denial of both applications, that order never became final because it was timely appealed by both Achernar and Lindsay to the United States Court of Appeals for the District of Columbia Circuit. The Court reversed the Commission's Decision and remanded the case to the agency. At no time during the pendency of the court appeal were the applications of Achernar and Lindsay dismissed and at no time since the original 1985 applications cutoff has there been a vacant Channel 64 available for application. Moreover, insofar as it seeks simply to attack the Achernar/Lindsay proposal, Petitioner fails to support any of its claims-- including those dealing with radio interference-- with the requisite affidavits or sworn statements.

5. Finally, in DA 99-2605, upon which Petitioner relies for its authority to file a rulemaking petition for a non 60-69 channel assignment, the Commission expressly excluded the Charlottesville Channel 64 proceeding: At Page 4, Note 9, the Commission said:

However, there are 2 applications (for channel 64 in Charlottesville, VA) that have been through an ex-

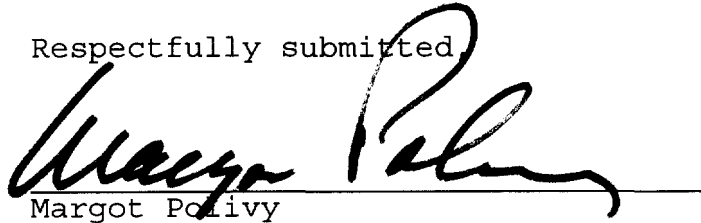
tended process of comparative hearing, court appeal, and remand to the Commission. They currently have pending a settlement agreement and an application amendment that specify a different channel. Because of the age and unique history of those applications and because they are currently before the Commission, the Bureau will not require the filing of a rule making petition.

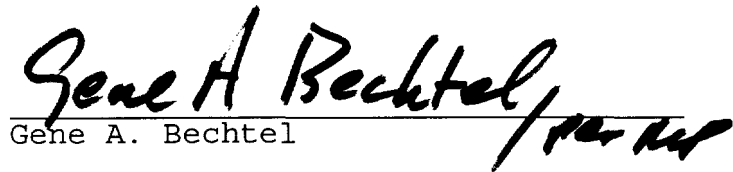
The Commission having thus made clear its intention to act on the Achernar/Lindsay matter separately, the Petitioner's filings pursuant to the DA 99-2605 proceeding could not be entertained.

CONCLUSION

For the reasons stated above the Givens & Bell pleading filed on May 25, 2000 should be dismissed without consideration.

Respectfully submitted,

  
Margot Polivy

  
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casting Corporation

7 June 2000

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Opposition to Filing of Givens & Bell Dated May 25, 2000 were sent first class mail, postage prepaid, this seventh day of June 2000, to the following:

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